

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PAUL J. SOMERS)	
Claimant)	
VS.)	
)	Docket No. 245,070
OTTAWA COUNTY CATTLE ASSOCIATION)	
Respondent)	
AND)	
)	
UNITED STATES FIRE INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appeal from the July 7, 1999 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

ISSUES

Claimant was injured January 15, 1999 while working for respondent. On May 3, 1999, he suffered a reinjury or aggravation of his previous injury while working for another employer. The ALJ awarded claimant preliminary benefits finding that the May aggravation was a natural progression of the original injury. Respondent contends that claimant's current condition and need for medical treatment is not the result of the January accident, but instead is the result of a new neck injury or subsequent intervening injury. Therefore, the issue is whether claimant's current need for medical treatment is due to an accidental injury that arose out of and in the course of claimant's employment with respondent. This issue is considered jurisdictional and is subject to review by the Board on an appeal from a preliminary hearing order.¹

FINDINGS OF FACT

1. On January 15, 1999, claimant was on horseback, performing his regular job duties for respondent. The horse reared up pinning claimant against a metal fence.
2. Claimant was provided authorized medical treatment with Dr. Petrakis which included a physical examination and x-rays of claimant's elbow, knee and ribs. Claimant had no head or neck complaints and exhibited no signs of trauma to the head or neck. Dr. Petrakis' medical records show that on physical examination claimant's neck was supple. The x-rays

¹ K.S.A. 1998 Supp. 44-534a(a)(2) and K.S.A. 1998 Supp. 44-551(b)(1).

showed no fractures or dislocations. She found "no sensation of numbness or tingling and his sensory is intact to pin prick."

3. Dr. Petrakis diagnosed claimant with numerous contusions with left elbow sprain, right knee sprain and possible torn muscle in gastrocnemius as well as rib contusions. Claimant was given pain medication and instructed to apply ice and rest. Claimant was also instructed to take off work for three or four days and to return if necessary or not improved. Claimant testified he took off two days of work and then returned to his regular job duties with respondent.

4. Claimant continued to work his regular job with respondent until March 1999. After missing approximately five days of work due to the death of his grandmother, claimant was terminated by respondent for excessive absenteeism. Within about two weeks, however, claimant started working a similar job with another feedlot in Oklahoma. On May 3, 1999 claimant was cutting cattle on horseback when he turned his head quickly to follow the movement of a cow. He heard a pop in his neck and immediately felt pain and nausea which caused him to throw up. He informed his employer that he was sick and needed to go home, which he did.

5. Claimant was seen by a Dr. W. F. Hudson in Buffalo, Oklahoma, on May 4, 1999. At that time, claimant was complaining of numbness in both hands, a lack of normal grip strength, a grinding and painful neck, and headaches. Claimant described the headaches as having begun soon after his January 1999 accident. Although the record is not clear, it appears the numbness and weakness in the hands was a new symptom. X-rays revealed narrowing interspaces of C2 and C3. Dr. Hudson diagnosed trauma to the cervical spine and suggested claimant obtain an MRI of his cervical spine and consult with a neurologist.

CONCLUSIONS OF LAW

The Workers Compensation Act places the burden of proof upon claimant to establish his right to an award of compensation and to prove the conditions on which that right depends.² "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."³ The Act is to be liberally construed to bring employers and employees within the provisions of the Act but those provisions are to be applied impartially to both.⁴

When the primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from the injury,

² K.S.A. 44-501(a); see also Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993) and Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

³ K.S.A. 44-508(g). See also In re Estate of Robinson, 236 Kan. 431, 690 P.2d 1383 (1984).

⁴ K.S.A. 44-501(g).

including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.⁵ It is not compensable, however, where the worsening or new injury would have occurred even absent the primary injury or where it is shown to have been produced by an independent intervening cause.⁶ The Appeals Board finds that claimant's work as a cowboy in Oklahoma following his termination by respondent and specifically the incident on May 3, 1999 when he turned his head and felt his neck pop, was an intervening cause of his worsened condition. That neck injury, therefore, constitutes a new accidental injury and is not compensable as a direct and natural consequence of the original January 1999 injury.

There is no medical evidence that claimant suffered a neck or cervical spine injury on January 15, 1999. The only evidence relating claimant's May 3, 1999 injury to the January accident is claimant's testimony that in January the horse caused him to strike his neck against the fence and within a few days after that accident he began experiencing intermittent headaches that continued until the May incident. But claimant never returned to Dr. Petrakis or sought treatment from any other doctor for neck pain or headaches before the May incident. Likewise, claimant continued to work and perform his regular job duties without any problems until the May incident. There is no medical opinion establishing causation between the January 15, 1999 accident and the symptoms of May 3, 1999. Claimant's testimony concerning intermittent headaches during this intervening period does not, in the Board's view, prove causation or that the May incident was a direct and natural consequence of the January 1999 injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on July 7, 1999, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

c: Norman R. Kelly, Salina, KS
Douglas C. Hobbs, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director

⁵ Jackson v. Stevens Well Service, 208 Kan. 637, 643, 493 P.2d 264 (1972).

⁶ Nance v. Harvey County, 263 Kan. 542, 952 P.2d 411 (1997); Stockman v. Goodyear Tire & Rubber Co., 211 Kan. 260, 505 P.2d 697 (1973). See also Bradford v. Boeing Military Airplanes, 22 Kan. App. 2d 868, 924 P.2d 1263, *rev. denied* 261 Kan. 1082 (1996).